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No. 374

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CHARLES ELMORE CRIPPLEY

In the
Supreme Court of the United States.

OCTOBER TERM, 1943.

ALBERT YAKUS,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT THEREOF.

✓ LEONARD PORETSKY,

✓ HAROLD WIDETZKY,

Attorneys for Petitioner.

• Of Counsel:

JOSEPH KRUGER.

INDEX.

	Page
PETITION	1
Statement of the matter involved	1
Jurisdiction	3
Questions presented	3
Reasons for granting the writ	3
BRIEF	5
Opinions below	5
Jurisdiction	5
Statement of the case	5
Specification of errors	6
Summary of argument	6
Argument	6
Conclusion	10
APPENDIX	11
Statutes involved	11
Provisions of the Emergency Price Control Act of 1942	11
Prices, rents, and market and renting practices	12
Prohibitions	15
Procedure	15
Review	16
Enforcement	19
Provisions of the Inflation Control Act of 1942	24
The regulation involved	25
Revised Maximum Price Regulation No. 169, 7 F.R. 10,381	25

TABLE OF AUTHORITIES CITED.

Brown, Admr. v. Wyatt Food Stores, Inc. (D.C. N.D. Tex. 1943) C.C.H. War Law Service 51,003	7
Callan v. Wilson, 127 U.S. 540	10
Carpenter v. Winn, 221 U.S. 533	10

	Page
Clinkenbeard v. United States, 21 Wall. (U.S.) 65	7
Commonwealth v. Anthes, 5 Gray (Mass.) 185	9, 10
Gilbert v. Priest, 65 Barb. (N.Y.) 444	9
Gordon v. United States, 117 U.S. 697	9
Merrill v. Sherburne, 1 N.H. 199	9
Monongahela Bridge Co. v. United States, 216 U.S. 177	7
Muskrat v. United States, 219 U.S. 346	9
Panama Refining Co. v. Ryan, 293 U.S. 388	8
People v. Bruner, 343 Ill. 146	9
Stevens, Landowner, 228 Mass. 368	8
Union Bridge Co. v. United States, 204 U.S. 364	7
United States v. Carolene Products Co., 304 U.S. 144	8
Way v. Thompson, L.R. 15 Q.B. 342	8
Emergency Price Control Act of 1942, 56 Stat. 23	
sec. 203 (a)	5
sec. 204 (d)	6, 7, 8
sec. 205 (c)	6, 9
Judicial Code, as amended, sec. 240 (a), 28 U.S.C.	
sec. 347 (a)	5
U.S. Constitution, Article III	6, 9
U.S. Constitution, Fifth Amendment	6, 8
U.S. Constitution, Sixth Amendment	6, 9, 10

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**PETITION FOR WRIT OF CERTIORARI TO THE
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This is a petition for a writ of certiorari to review the final judgment of the Circuit Court of Appeals entered August 23, 1943 (R. 60), affirming the judgment of the District Court for the District of Massachusetts entered April 30, 1943, against the defendant, this petitioner (R. 12).

Statement of the Matter Involved.

The indictment (R. 1-4) charges the petitioner with violations of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended, by selling and delivering wholesale cuts of beef at prices higher than the maximum prices as

determined under Revised Maximum Price Regulation No. 169, as amended (7 F.R. 10,381).

At various appropriate stages in the proceedings in the District Court the petitioner challenged the constitutionality of the Act and the validity of the Regulation as follows:

- (1) Motion to quash the indictment (R. 5-10);
- (2) Amended motion to quash the indictment (R. 10-12);
- (3) Offer of proof through the testimony of Prentiss M. Brown, Price Administrator, that the Regulation did not provide an equitable margin of profit, thereby violating the Inflation Control Act of 1942 (56 Stat. 765) (R. 18);
- (4) Offer of proof of detailed economic data designed to show that the Regulation was arbitrary and capricious and would require the defendant, in the efficient conduct of his business, to sell his product at a price lower than the actual cost of production (R. 19-23);
- (5) Requests for instructions to the jury (R. 24-28);
- (6) Motion in arrest of judgment (R. 13-16).

The District Court upheld the Act. It refused to allow the proffered testimony to be given or to consider a defense based upon the invalidity of the Regulation on the ground that § 204(d) of the Act deprived it of jurisdiction to entertain such a defense (R. 18 and 23). The District Court adhered to this position in its charge to the jury (R. 31) and its rulings on requests submitted by the petitioner (R. 24) and on motion in arrest of judgment (R. 15-16). Upon a finding of guilty by the jury the petitioner was sentenced to six months' imprisonment and a fine of \$1000.

The Circuit Court of Appeals unanimously affirmed the judgment of the District Court.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on August 23, 1943. The jurisdiction of this Court is invoked under § 240(a) of the Judicial Code, as amended, 28 U.S.C. § 347(a).

Questions Presented.

1. Is the Act constitutional?
2. May a defendant in a criminal prosecution challenge the constitutionality or statutory validity of the Regulation?
3. Is the doctrine of the exhaustion of administrative remedies to be imported into the criminal law?

Reasons for Granting the Writ.

This Court has not yet had occasion to pass upon the constitutionality of the provisions of the Emergency Price Control Act of 1942 other than those pertaining to the exclusive jurisdiction of the Emergency Court of Appeals in a civil suit brought to restrain enforcement of the Act or of regulations issued under it. *Lockerty v. Phillips*, U.S. , decided May 10, 1943.

In that case this Court expressly left open the question presented by the case at bar of whether, or to what extent, the trial court may entertain a defense based upon the invalidity of the Regulation.

In *Bowles v. United States*, U.S. , decided May 3, 1943, a case believed by the Court to present a question of law similar to that reserved in *Lockerty v. Phillips*, *supra*, this Court granted certiorari because of the public importance of the question. The Court, however, disposed of that case without decision of this question.

In *Hirabayashi v. United States*, U.S. , decided June 21, 1943, Mr. Justice Douglas, in his concurring opinion, stated that, if administrative relief were there provided for, whether the administrative remedy would be the only one available or would have first to be exhausted was reserved.

The case at bar, therefore, presents momentous questions of constitutional law and grave questions of administrative and criminal law which have not yet been, but should be, determined by this Court.

Wherefore the petitioner respectfully prays that his petition for a writ of certiorari be granted.

LEONARD PORETSKY,
HAROLD WIDETZKY,
Attorneys for Petitioner.

Of Counsel:

JOSEPH KRUGER.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

No opinion was rendered by the District Court in this case. Its action with respect to the motion to quash was governed by its written opinion on a like motion in the case of *United States v. Rottenberg*, which was then pending before that Court. The *Rottenberg* case was argued before the Circuit Court of Appeals at the same time as the instant case, and the written opinion of the Circuit Court of Appeals embraces both cases. A petition for writ of certiorari is being filed in the *Rottenberg* case within the time limit prescribed for the filing of the petition in the case at bar. The written opinion of the District Court in the *Rottenberg* case appears on pages 59 to 67 of the Record in that case.

The opinion of the Circuit Court of Appeals was handed down on August 23, 1943, and has not yet been officially reported. It appears on pages 43 to 60 of the Record.

Jurisdiction.

The jurisdiction of this Court is invoked under § 240 (a) of the Judicial Code, as amended, 28 U.S.C. § 347 (a).

Statement of the Case.

The basic facts have been summarized in the foregoing petition.

It may be added that the petitioner did not within a period of sixty days after the issuance of the Regulation file a protest with the Price Administrator under § 203 (a) of the Act.

Specification of Errors.

The errors assigned (R. 39-40), upon all of which the petitioner relies, raise in substance the following issues:

1. Did the District Court have the power and the duty to consider the statutory and constitutional validity of the Regulation; and
2. If not, is § 204 (d) of the Act constitutional?

Summary of Argument.

The Act as a matter of interpretation does permit a defense to the indictment based upon the statutory or constitutional invalidity of the Regulation.

If, however, § 204 (d) of the Act does preclude a consideration of the validity of the Regulation, such a command constitutes (1) a denial of due process of law in violation of the Fifth Amendment; (2) an encroachment by Congress upon the judicial power of the courts derived from Article III of the Constitution and not from Congress; (3) a denial of the right of a jury trial as guaranteed by the Sixth Amendment.

Argument.

I.

As a matter of statutory construction the Act does not preclude the District Court from considering the statutory or constitutional validity of the Regulation.

1. Review of administrative regulations is provided for in one section of the Act (§ 204); criminal proceedings for violation of such regulations in an entirely different section (§ 205(c)). It is in the former section, and in that section only, that there appears the provision upon which the Government's argument is based. No such provision

appears in the latter section dealing with criminal proceedings.

2. The draftsman has used terms appropriate only to equity procedure; he has used no terms appropriate to criminal procedure.

3. This, being a criminal and penal statute in its application to the case at bar, should be strictly construed.

4. The restrictive provisions of § 204(d) of the Act apply only to civil proceedings in which the citizen seeks affirmative relief, and not to cases in which the Price Administrator or the Government brings the citizen into court.

Clinkenbeard v. United States, 21 Wall. (U.S.) 65 (1874).

Brown, Admr., v. Wyatt Food Stores, Inc. (D.C. N.D. Tex. 1943) C.C.H. War Law Service 51,003 (not officially reported).

II.

The doctrine of exhaustion of administrative remedies is not applicable to a criminal prosecution.

1. The rule which requires a litigant to exhaust administrative remedies before he resorts to the courts for relief is in essence a rule of equity jurisdiction, invoked by the courts where the litigant is seeking affirmative relief.

2. If the citizen is to be punished criminally for violating an administrative regulation, the court trying him for that crime must determine whether the regulation is valid.

Clinkenbeard v. United States, 21 Wall (U.S.) 65 (1874).

Union Bridge Co. v. United States, 204 U.S. 364 (1907).

Monongahela Bridge Co. v. United States, 216 U.S. 177 (1910).

Stevens, Landowner, 228 Mass. 368 (1917).

Waye v. Thompson, L.R. 15 Q.B. 342 (1885).

See *Panama Refining Co. v. Ryan*, 293 U.S. 388, 432 (1935).

3. The cases relied upon by the Government do not hold to the contrary and are distinguishable.

4. Under whatever procedural guise it be cloaked, we should recognize that we have here fundamentally the competing claims of two branches of government, with the administrative branch seeking, in the name of war-time expediency, to encroach upon a field, trial by jury in a criminal case, historically and jealously reserved to the judicial branch.

III.

If the provisions of § 204(d) of the Act do purport to preclude a consideration of the validity of the Regulation, such provisions are unconstitutional.

1. Such a command constitutes a denial of due process of law in violation of the Fifth Amendment.

(a) The time within which a person subject to the provisions of a regulation issued under the Act may seek administrative relief is strictly limited—sixty days. Thereafter no such relief is open to him. In the case at bar on the date of the indictment the sixty-day period had elapsed. Such limitation is unreasonable.

(b) In any event, due process of law in a criminal prosecution requires an opportunity to prove at the trial the lack of a rational basis for the legislation being attacked, or lack of authority for the administrative order.

Panama Refining Co. v. Ryan, 293 U.S. 388, 432, 433 (1935).

United States v. Carolene Products Co., 304 U.S. 144, 152 (1937).

2. Such a command constitutes an encroachment by Congress upon the judicial power of the courts.

(a) When Congress in § 205(c) of the Act vested in the District Courts *jurisdiction* of criminal proceedings, the *judicial power* which such courts are thus called upon to exercise is derived from Article III of the Constitution and not from Congress.

Muskrat v. United States, 219 U.S. 346, 356 (1911).

Gilbert v. Priest, 65 Barb. (N.Y.) 444, 448 (1873).

People v. Bruner, 343 Ill. 146 (1931).

(b) The judicial power vested in the District Courts by the Constitution cannot, therefore, be limited, restricted or interfered with by legislative action.

Merrill v. Sherburne, 1 N.H. 199 (1818).

Commonwealth v. Anthes, 5 Gray (Mass.) 185 (1855).

(c) The question of the relevancy of evidence offered in a criminal trial raises a question of law which must necessarily be decided by the court in the exercise of its judicial power, and it is an unconstitutional encroachment by the legislative upon the judicial department for Congress to take from a court having jurisdiction to try a criminal indictment its judicial power to decide a question of relevancy.

See *Gordon v. United States*, 117 U.S. 697, 700 and 705 (1865).

3. Such a command constitutes a denial of the right of a jury trial as guaranteed by the Sixth Amendment.

In all criminal trials according to the settled principles of the common law—the kind of trial guaranteed by the Sixth Amendment—two questions are involved: first, whether there is such a law as the defendant is charged with violating; and second, whether he has violated that law. And it follows necessarily that, in criminal trials according to the settled principles of the common law, the court has not only the power but the duty to say what the law is.

Callan v. Wilson, 127 U.S. 540, 549-550 (1888).
Carpenter v. Winn, 221 U.S. 533, 538-539 (1911).
Commonwealth v. Anthes, 5 Gray (Mass.) 185,
 188-189 (1855).

Conclusion.

It is respectfully submitted that this case is one calling for the exercise by this Court of its appellate jurisdiction, and that to such end a writ of certiorari should issue to the Circuit Court of Appeals for the First Circuit.

Respectfully submitted,
 LEONARD PORETSKY,
 HAROLD WIDETZKY,
 Attorneys for Petitioner.

Of Counsel: .
 JOSEPH KRUGER.

APPENDIX.

Statutes Involved.

The Emergency Price Control Act of 1942, 56 Stat. 23, and the Inflation Control Act of 1942, 56 Stat. 765, the pertinent provisions of which are as follows:

PROVISIONS OF THE EMERGENCY PRICE CONTROL ACT OF 1942.

SECTION 1. (a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3; and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes. It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various

bureaus, the War Department, the Navy Department, the War Production Board, the National Labor Relations Board, the National Mediation Board, the National War Labor Board, and others heretofore or hereafter created), within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages, and cost of production.

(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1943; or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

(c) The provisions of this Act shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

PRICES, RENTS, AND MARKET AND RENTING PRACTICES

SEC. 2. (a) Whenever in the judgment of the Price Administrator (provided for in section 201) the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the

purposes of this Act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity, there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judgment of the Administrator, the prices for such commodity are generally representative), for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ended October 1, 1941. Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order. As used in the foregoing provisions of this subsection, the term "regulation or order" means a regulation or order of general applicability and effect. Before issuing any regulation or order under the foregoing provisions of this subsection, the Administrator shall, so far as practicable, advise and consult with representative members of the industry which will be affected by such regulation or order. In the case of any commodity for which a maximum price has been established, the Administrator shall, at the request of any substantial portion of the industry subject to such maximum price, regulation, or order of the Administrator, appoint an industry advisory committee, or committees, either national or regional or both, con-

sisting of such number of representatives of the industry as may be necessary in order to constitute a committee truly representative of the industry, or of the industry in such region, as the case may be. The committee shall select a chairman from among its members, and shall meet at the call of the chairman. The Administrator shall from time to time, at the request of the committee, advise and consult with the committee with respect to the regulation or order, and with respect to the form thereof, and classifications, differentiations, and adjustments therein. The committee may make such recommendations to the Administrator as it deems advisable. Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, without regard to the foregoing provisions of this subsection, issue temporary regulations or orders establishing as a maximum price or maximum prices the price or prices prevailing with respect to any commodity or commodities within five days prior to the date of issuance of such temporary regulations or orders; but any such temporary regulation or order shall be effective for not more than sixty days, and may be replaced by a regulation or order issued under the foregoing provisions of this subsection.

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents pre-

vailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

PROHIBITIONS

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

PROCEDURE

SEC. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any person subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the

transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

(b) In the administration of this Act the Administrator may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 202.

(c) Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs.

REVIEW

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in

connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness

of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act. The court may fix and establish a table of costs and fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any item the costs and fees charged

in the Supreme Court of the United States. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

ENFORCEMENT

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a

violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than \$5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f). (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance

on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for \$50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum

price or maximum prices, and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act.

(f) (1) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement of any regulation or order issued or which may be issued under section 2, or of any price schedule effective in accordance with the provisions of section 206, he may by regulation or order issue to or require of any person or persons subject to any regulation or order issued under section 2, or subject to any such price schedule, a license as a condition of selling any commodity or commodities with respect to which such regulation, order, or price schedule is applicable. It shall not be necessary for the Administrator to issue a separate license for each commodity or for each regulation, order, or price schedule with respect to which a license is required. No such license shall contain any provision which could not be prescribed by regulation, order, or requirement under section 2 or section 202: *Provided*, That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further*, That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fisherman as a condition of selling any fishery commodity caught or taken by

him: *Provided further*, That in any case in which such a license is required of any person, the Administrator shall not have power to deny to such person a license to sell any commodity or commodities, unless such person already has such a license to sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order of suspension of a previous license to the extent that such previous license authorized such person to sell such commodity or commodities.

(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202 (b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations herein-after provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, order, price schedule, or requirement after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it authorizes such person to sell the commodity or commodities in connection with which the violation occurred, or to the extent that it authorizes such person to sell any commodity or commodities with respect to which a regulation or order issued under section 2, or a

price schedule effective in accordance with the provisions of section 206, is applicable; but no such suspension shall be for a period of more than twelve months. For the purposes of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceed \$100,000 per annum. Within thirty days after the entry of the judgment or order of any court either suspending a license, or dismissing or denying in whole or in part the Administrator's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified, and the license which has been suspended may be restored, upon such terms and conditions as such court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, order, price schedule, or requirement after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provision of this Act.

PROVISIONS OF THE INFLATION CONTROL ACT OF 1942.

Section 3. . . . no maximum price shall be established or maintained under authority of this Act or otherwise for any commodity processed or manufactured in whole or sub-

stantial part from any agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price therefor equal to the higher of the prices specified in clauses (1) and (2) of this section: . . . Provided further, That in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing. . . .

The Regulation Involved.

REVISED MAXIMUM PRICE REGULATION No. 169, 7 F.R. 10,381.

§ 1364.451 *Prohibition against selling beef and veal carcasses and wholesale cuts, and processed products at price above the maximum—(a) Beef carcasses and wholesale cuts.* On and after December 16, 1942, regardless of any contract, agreement, or other obligation no person shall sell or deliver any beef carcass or beef wholesale cut, and no person shall buy or receive any beef carcass or beef wholesale cut at a price higher than the maximum price permitted by § 1364.451; . . .